

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

AMERICAN OVERSIGHT,
1030 15th Street NW, B255
Washington, DC 20005

Plaintiff,

v.

U.S. DEPARTMENT OF
TRANSPORTATION,
1200 New Jersey Avenue SE
Washington, DC 20590

Defendant.

Case No. 19-cv-1752

COMPLAINT

1. Plaintiff American Oversight brings this action against the U.S. Department of Transportation under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendant the U.S. Department of Transportation has failed to comply with the applicable time-limit provisions of FOIA, American Oversight is deemed to have constructively exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and

is now entitled to judicial action enjoining the agency from continuing to withhold agency records and ordering the production of agency records improperly withheld.

PARTIES

5. Plaintiff American Oversight is a nonpartisan non-profit section 501(c)(3) organization primarily engaged in disseminating information to the public. American Oversight is committed to promoting transparency in government, educating the public about government activities, and ensuring the accountability of government officials. Through research and FOIA requests, American Oversight uses the information it gathers, and its analysis of it, to educate the public about the activities and operations of the federal government through reports, published analyses, press releases, and other media. The organization is incorporated under the laws of the District of Columbia.

6. Defendant the U.S. Department of Transportation (DOT) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). DOT has possession, custody, and control of the records that American Oversight seeks.

STATEMENT OF FACTS

DOT Officials' Calendars Request

7. On October 17, 2018, American Oversight submitted a FOIA request to DOT, bearing internal tracking number DOT-18-0673, regarding calendars for certain DOT officials.

8. American Oversight's FOIA request to DOT specifically sought the following records:

All calendars or calendar entries for any of the following individuals, including any calendars maintained on behalf of these individuals (e.g., by an administrative assistant) for the date ranges provided below. If no date range is specified, please provide all responsive records from the date each custodian joined DOT through the date the search is conducted:

- Elaine Chao (April 1, 2018, through the date of the search)
- Jeff Rosen (April 1, 2018, through the date of the search)
- Geoff Burr (April 1, 2018, through the date of the search)
- Doug Simon
- Tamara Somerville
- Allison Moore

9. DOT acknowledged receiving American Oversight's FOIA request and assigned the request FOIA tracking number 2019-30.

10. American Oversight has not received any further communication from DOT regarding this FOIA request.

J. Todd Inman Calendar Request

11. On January 19, 2019, American Oversight submitted a FOIA request to DOT, bearing internal tracking number DOT-19-0024, regarding calendars for current Chief of Staff and former political aide J. Todd Inman.

12. American Oversight's FOIA request to DOT specifically sought the following records:

All calendars or calendar entries for J. Todd Inman—including any calendars maintained on his behalf (*e.g.*, by an administrative assistant)—from January 20, 2017, through the date the search is conducted.

13. DOT acknowledged receiving American Oversight's FOIA request and assigned the request FOIA tracking number 2019-105.

14. American Oversight has not received any further communication from DOT regarding this FOIA request.

McConnell-Chao Communications Request

15. On April 29, 2019, American Oversight submitted a FOIA request to DOT, bearing internal tracking number DOT-19-0554, regarding communications between the offices of Secretary Elaine Chao and Senator Mitch McConnell.

16. American Oversight's FOIA request to DOT specifically sought the following records:

1. All records reflecting communications (including emails, email attachments, text messages, telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, or other materials) between (a) anyone in the Immediate Office of the Secretary (S-1), including Secretary Chao, and (b) Senator Mitch McConnell or anyone who works for Mr. McConnell, including anyone whose email ends in @mcconnell.senate.gov.
2. All records reflecting communications (including emails, email attachments, text messages, telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, or other materials) between (a) anyone in the Office of the Under Secretary of Transportation for Policy (S-3) and (b) Senator Mitch McConnell or anyone who works for Mr. McConnell, including anyone whose email ends in @mcconnell.senate.gov.
3. All records reflecting communications (including emails, email attachments, text messages, telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, or other materials) between (a) anyone in the Office of Governmental Affairs (OST-I) and (b) Senator Mitch McConnell or anyone who works for Mr. McConnell, including anyone whose email ends in @mcconnell.senate.gov.

The request sought all responsive records from August 7, 2018, to the date the search was conducted.

17. DOT acknowledged receiving American Oversight's FOIA request and assigned the request FOIA tracking number 2019-245.

18. American Oversight has not received any further communication from DOT regarding this FOIA request.

Exhaustion of Administrative Remedies

19. As of the date of this Complaint, DOT has failed to (a) notify American Oversight of a final determination regarding American Oversight's FOIA requests, including the scope of

any responsive records DOT intends to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

20. Through Defendant's failure to respond to American Oversight's FOIA requests within the time period required by law, American Oversight has constructively exhausted its administrative remedies and seeks immediate judicial review.

COUNT I
Violation of FOIA, 5 U.S.C. § 552
Failure to Conduct Adequate Searches for Responsive Records

21. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

22. American Oversight properly requested records within the possession, custody, and control of Defendant.

23. DOT is an agency subject to FOIA and must therefore make reasonable efforts to search for requested records.

24. DOT has failed to promptly review agency records for the purpose of locating those records that are responsive to American Oversight's FOIA requests.

25. DOT's failure to conduct adequate searches for responsive records violates FOIA.

26. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring DOT to promptly make reasonable efforts to search for records responsive to American Oversight's FOIA requests.

COUNT II
Violation of FOIA, 5 U.S.C. § 552
Wrongful Withholding of Non-Exempt Records

27. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

28. American Oversight properly requested records within the possession, custody, and control of Defendant.

29. DOT is an agency subject to FOIA and must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

30. DOT is wrongfully withholding non-exempt agency records requested by American Oversight by failing to produce records responsive to its FOIA requests.

31. DOT is wrongfully withholding non-exempt agency records requested by American Oversight by failing to segregate exempt information in otherwise non-exempt records responsive to American Oversight's FOIA requests.

32. DOT's failure to provide all non-exempt responsive records violates FOIA.

33. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring DOT to promptly produce all non-exempt records responsive to its FOIA requests and provide an index justifying the withholding of any responsive records withheld under claim of exemption.

REQUESTED RELIEF

WHEREFORE, American Oversight respectfully requests the Court to:

- (1) Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to American Oversight's FOIA requests;
- (2) Order Defendant to produce, by such date as the Court deems appropriate, any and all non-exempt records responsive to American Oversight's FOIA requests and an index justifying the withholding of any responsive records withheld under claim of exemption;

- (3) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to American Oversight's FOIA requests;
- (4) Award American Oversight attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (5) Grant American Oversight such other relief as the Court deems just and proper.

Dated: June 17, 2019

Respectfully submitted,

/s/ Sara Kaiser Creighton

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